IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 884 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KASAM IBRAHIM SIPAEE

Appearance:

Mr. R.M. Chauhan, APP for the appellant State.

MR MM TIRMIZI for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 07/10/1999

ORAL JUDGEMENT

The respondent, who was placed on trial in connection with the offences punishable under Section 271, 338 of the Indian Penal Code and 116 of the Motor Vehicles Act, read with Section 112 and 89 of that Act, in the Court of Chief Judicial Magistrate, Jamnagar, came to be acquitted on 26th September 1991. Being aggrieved by such order of acquittal, the State has filed this appeal calling in question the legality and validity of the order of acquittal.

2. Necessary facts may, in brief, be stated.

Jitendra Narandas had been to his grocery shop situate in Kadiawad at Jamnagar. Harish Shantilal is his cousin brother. On 2nd March 1987 both were going to their house. Jitendra was driving the cycle while Harish Shantilal was the pillion-rider. They were passing by the Town Hall. At that time it was 12.00 p.m. One rickshaw driven by the respondent came from behind at an excessive speed. The respondent lost the control over his vehicle. He, therefore, hit Jitendra from behind and knocked him down injured. Jitendra sustained fracture of Tibia fibula bones. He was taken to the hospital for treatment. The respondent went away without stopping his rickshaw. A complaint was then lodged with `B' Division Police Station of Jamnagar city. After the investigation was over, a chargesheet against the respondent was filed in the Court of the Chief Judicial Magistrate, Jamnagar which came to be registered as Criminal Case No. 2847 of 1987. A plea was taken. The respondent pleaded not guilty. The prosecution therefore exxamined 5 witnesses. Appreciating the evidence on record, the learned Chief Judicial Magistrate found that the prosecution had failed to establish the charge levelled against the respondent. He, therefore, acquitted the respondent. It is against that order of acquittal, the present appeal is filed before this Court.

3. Mr. K.P. Raval, learned APP submits, taking me through the entire evidence on record, that the learned Chief Judicial Magistrate erroneously acquitted the respondent. According to him, it is clear from the evidence on record that the respondent was driving his rickshaw at a high speed. Not to drive the vehicle at the high speed is the duty of the driver. Still, however, in this case, when the respondent drove his rickshaw at the high speed and hit Jitendra from behind, and knocked him down injured, there was no reason for the learned Chief Judicial Magistrate to abstain from holding the respondent guilty.

4. In order to establish the charge, the prosecution has to prove that the vehicle was driven rashly and negligently endangering the human life and because of such rash and negligent driving the accused caused injury. In order to establish rash and negligent driving of the rickshaw by the respondent, Mr. Raval based his submission only on one aspect of the case, and that is, rickshaw being driven at the high speed which can be noticed from the evidence of Harish Shantilal (Ex.8). No doubt, Harish Shantilal has stated that the rickshaw coming from behind was being driven at the excessive speed by the respondent but nothing further is brought on

record. Whether such evidence is sufficient to hold that the respondent was driving the rickshaw at the excessive speed is the point that arises for consideration. The use of the expression `high speed' is not enough to prove rashness or negligence unless evidence is further elucidated from the witness who used that expression as to what his notion of speed was. If that is not elucidated, only on the expression of high speed, it cannot be held that the driver of the vehicle was rash and negligent in driving and that his driving was endangering the human life. In the case on hand, it is not elucidated from Harishbhai Shantilal as to what his notion about high speed was. In the absence of any elucidation about the high speed, it will not be just and proper to jump to the conclusion regarding rash and negligent driving on the basis of the evidence of Harishbhai Shantilal who has simply stated that rickshaw was being driven at the high speed. When that is so, and when there is no other evidence on record establishing rash and negligent driving of respondent, the learned Chief Judicial Magistrate was perfectly right in holding that prosecution failed to establish the charge of rash and negligent driving and causing injury by rash and negligent driving. On this material point going to the root of the case when the prosecution fails it is not necessary to dwell upon other points raised. However,one point may be dealt with.

5. The incident happened on 2nd March 1987 and the FIR came to be lodged on 6th May 1987, nearly about two months and 4 days after the incident. The delay in lodging the FIR is not explained. Harishbhai Shantilal or injured Jitendrabhai could have filed the FIR remaining in the hospital as ordinarily the doctors have to inform regarding medico-legal case to the police station or to the Constable on hospital-duty, who going to the victim records complaint. However, they have taken no care of lodging the FIR and no reason is also assigned for omitting to do the same. Naranbhai Vithaldas on being informed by Harishbhai Shantilal had rushed to the hospital and making query he had gathered information from Jitendra regarding the manner in which the incident had happened but he also did not file the complaint in time and allowed the time of 2 months and 4 days to pass. For such delay when no explanation is offered, it is a circumstance on record indicating concoction.

6. For the foregoing reasons, the learned Chief Judicial Magistrate was perfectly right in holding that the prosecution failed to establish the charge and

acquitting the respondent. I also see no reason to upset the order of acquittal. The appeal being devoid of merits is hereby dismissed, maintaining the order of acquittal.

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(rmr).